

1 Q So to the consumer it doesn't
2 really matter whether that programming is on
3 a network called Home Team Sport or called
4 Comcast Sports Net Mid-Atlantic, correct?

5 A That would be correct.

6 Q Consumers wouldn't care if the
7 programming is on MASN or CSN MA, correct?

8 A No.

9 Q So seeing the programming is
10 what's important to the consumer, correct?

11 A Yes.

12 Q Now historically the programming
13 might be branded under several different
14 names, correct?

15 A Could be.

16 Q But the basic programming for
17 Orioles has always consisted of major league
18 baseball games of the Baltimore Orioles;
19 correct?

20 A That's correct.

21 Q Now I believe in your testimony
22 you said that distance was a factor in your

1 determination of which systems to put on

2 Schedule A. Do you recall that testimony?

3 A I believe my testimony was which
4 systems to limit the obligation to, and
5 therefore, yes.

6 Q Because you wanted to figure out
7 what you could live with, correct?

8 A I wanted to keep the obligation as
9 small as possible, and let the consumer
10 influence our thinking from that point
11 forward.

12 Q So it was what you could live with
13 as opposed to what treatment would be the same
14 as a Comcast affiliated RSN; correct?

15 A I wanted to limit the obligation
16 to as small an area as possible and have a
17 hunting license for everywhere else, so the
18 consumer could give us an updated view of
19 demand for the product.

20 Q You did not studies
21 differentiating markets within the MASN
22 television territory, did you?

1 A No.

2 Q And in fact you launched MASN on a
3 system 190 miles from Baltimore; correct?

4 A I'm not sure which one you are
5 referring to.

6 Q The Emporia system is
7 approximately 190 miles from Baltimore;
8 correct?

9 A Yes.

10 Q And the Staunton system is
11 approximately 160 miles from Baltimore;
12 correct?

13 A I'll accept that.

14 Q And the Petersburg rebuild in
15 Dimwiddie County system is approximately 150
16 miles from Baltimore?

17 A I'll accept that.

18 Q And each of those communities is
19 somewhat lesser distance to Washington,
20 correct?

21 A Each of those communities -- yes,
22 yes.

1 Q Washington is closer to each of
2 those communities, correct?

3 A Yes.

4 Q Now you just testified that
5 Sequoia, which is in Fairfax County, is
6 actually quite close to Washington?

7 A Yes.

8 Q Okay, so with respect to Sequoia,
9 distance was not the issue that caused you not
10 to put that system on the list, correct?

11 A Correct; that would have been
12 bandwidth.

13 Q Okay. There are a number of
14 systems, however, that are quite close to
15 Washington and Baltimore that have not been
16 launched; correct?

17 A A number of systems close to
18 Baltimore?

19 Q And Washington that have not been
20 launched, correct?

21 A Three or four.

22 Q And one of those would be

1 Cecilton/Galena, correct?

2 A Correct.

3 Q And that system is within
4 approximately 40 to 50 miles of Baltimore,
5 correct?

6 A Yes.

7 Q And it's located in the northern
8 part of Maryland, correct?

9 A Yes.

10 Q It's in the Baltimore DMA,
11 correct?

12 A It is.

13 Q And the Harrisburg system is
14 approximately 70 miles from Baltimore;
15 correct?

16 A Correct.

17 Q And the Lebanon system is
18 approximately 70 miles to Baltimore; correct?

19 A Right.

20 Q And the Hershey system is
21 approximately 70 miles to Baltimore, correct?

22 A I'll accept that.

1 Q And the Harrisburg, Lebanon and
2 Hershey systems are all approximately 100
3 miles to Washington; correct?

4 A Okay.

5 Q The Newport system is
6 approximately 90 miles to Baltimore; correct?

7 A Newport I'm not familiar with, but
8 I will take your word for it.

9 Q Okay, but there are other systems
10 that are closer to Baltimore or Washington
11 than three systems that Comcast launched;
12 correct?

13 A Correct.

14 Q So the application of a distance
15 criteria was not consistently applied,
16 correct?

17 A It was a criteria, I said; not the
18 criteria.

19 Q I understand. So would you answer
20 my question?

21 A Consistently applied to what?

22 Q To all of the systems.

1 A No, we did not draw a circle
2 around Baltimore-Washington and say, this is
3 it.

4 Q Okay. Some outside the circle
5 were allowed to be launched, correct?

6 A Correct.

7 Q Okay, and some inside the circle
8 were not launched?

9 A Based on consumer demand, yes,
10 sir.

11 Q It's all based on consumer demand
12 if the distance doesn't square; is that your
13 testimony?

14 A Yes.

15 Q But you did no studies on consumer
16 demand, did you, sir?

17 A Based on my experience.

18 Q Okay, so you did no studies, but
19 your testimony is that consumer demand is all
20 based on your experience; is that your
21 testimony?

22 A As long as we had a hunting

1 license, yes, that is my testimony.

2 Q Leave the hunting license aside,
3 Mr. Ortman; just answer the question if you
4 would.

5 A Yes.

6 Q You did not demand study, correct?

7 A That's correct.

8 Q And you inconsistently applied the
9 distance criteria, correct?

10 MR. KIRK: Objection, Your Honor?

11 JUDGE SIPPEL: Yes? What's the
12 objection.

13 MR. KIRK: He's
14 mischaracterizing. He just said he doesn't
15 apply one criteria at a time; it's a
16 collective. Now he's saying he misapplied one
17 of the criteria. It's a balancing.

18 JUDGE SIPPEL: Well, what
19 criteria are you saying?

20 MR. FREDERICK: I'm just saying,
21 Your Honor, he has testified that some systems
22 farther away from Washington were launched,

1 and systems closer to Washington-Baltimore
2 were not launched. I asked the question:
3 that's an inconsistent application of that one
4 criteria. And I believe his testimony was yes
5 until he got interrupted.

6 JUDGE SIPPEL: Well, wait a
7 minute, not if it's a bandwidth.

8 THE WITNESS: Exactly.

9 MR. FREDERICK: Your Honor --

10 JUDGE SIPPEL: But you didn't ask
11 the question that way.

12 MR. FREDERICK: I asked the
13 question -- I will get to bandwidth in a
14 moment, sir.

15 JUDGE SIPPEL: Okay, well, I am
16 sustaining the objection. Rephrase your
17 question and come at it --

18 BY MR. FREDERICK:

19 Q With respect to the criteria, just
20 that one criterion of distance, is it a fact
21 that Comcast inconsistently applied that
22 criterion for launching MASN?

1 MR. KIRK: Same objection, Your
2 Honor.

3 THE WITNESS: It's almost a
4 hypothetical --

5 JUDGE SIPPEL: Wait a minute.

6 MR. KIRK: Same objection. It's
7 a balancing. He's implying that the factor
8 of distance is applied inconsistently. There
9 is nothing inconsistent if there is a
10 bandwidth issue that is affecting his
11 analysis.

12 JUDGE SIPPEL: No, wait a minute.
13 But the question -- he eliminated bandwidth as
14 a factor in the question.

15 MR. KIRK: And he's saying, are
16 you misapplying the distance analysis.

17 JUDGE SIPPEL: Well, let's see
18 what the witness can do with that. As long as
19 the witness is not being misled on that.

20 You understand the question?

21 THE WITNESS: It's a hypothetical
22 question, because I wouldn't make the

1 evaluation based on one and only one criteria;
2 it was a balancing act of multiple criteria.
3 So the way it's being asked, it's a
4 hypothetical question I really can't answer.

5 MR. FREDERICK: Your Honor, it's
6 not a hypothetical question if there are two
7 systems, one that is far away, and is
8 launched, and one that is close that is not
9 launched. The question is, is there a
10 difference in application of that criterion in
11 the launch with respect to that one criteria.

12 JUDGE SIPPEL: Difference to
13 what?

14 MR. FREDERICK: Well, Your Honor,
15 he said -- the witness has testified there are
16 three criteria.

17 JUDGE SIPPEL: You don't have to
18 go back and tell me that. You don't have to
19 explain that. I'm more concerned with the
20 witness' ability to understand answer the
21 question.

22 You're saying that when you made -

1 - when these decisions were made, there were
2 multiple criteria?

3 THE WITNESS: Yes, there were.

4 JUDGE SIPPEL: All right. Among
5 the multiples that were being made, was there
6 a different application of the distance
7 criteria to a MASN affiliate versus -- I'm
8 sorry, a Comcast affiliate versus a MASN?

9 THE WITNESS: No.

10 JUDGE SIPPEL: All right.

11 MR. FREDERICK: Your Honor, can I

12 --

13 JUDGE SIPPEL: You want to try it
14 another way?

15 MR. FREDERICK: Let me try it a
16 different way.

17 BY MR. FREDERICK:

18 Q Leaving aside bandwidth for a
19 moment -- we'll get to bandwidth; I'll give
20 you an opportunity to answer questions about
21 bandwidth, sir, I promise you -- leaving aside
22 bandwidth and just focusing on the distance

1 criteria, is it a fact that Comcast
2 inconsistently applied that one criteria by
3 launching systems farther away and not
4 launching systems closer to Baltimore?

5 JUDGE SIPPEL: He's got a valid
6 objection to that. Based on this witness'
7 testimony with respect to how that is done, it
8 just can't be -- it cannot be limited that
9 way. Because the reasons that Mr. Kirk gave,
10 the reasons that the witness gave.

11 MR. FREDERICK: Your Honor --

12 JUDGE SIPPEL: He did say, he did
13 agree with that, there might be a distance
14 factor -- there can be a distance factor.
15 There can be, maybe what appears to be, an
16 unequal application of distance factor, but
17 only in connection -- only if you will let him
18 answer the question with respect to all the
19 criteria that he considered.

20 THE WITNESS: Thank you, Your
21 Honor.

22 JUDGE SIPPEL: Okay?

1 MR. FREDERICK: All right, Your
2 Honor, let me -- when I get to bandwidth
3 questions --

4 JUDGE SIPPEL: You can't isolate
5 it. You can't isolate him in his answer. You
6 can ask the question, but you got to let him
7 answer the question fully.

8 MR. FREDERICK: All right.

9 BY MR. FREDERICK:

10 Q Is it true that some systems that
11 Comcast launched are significantly farther
12 away than systems that Comcast did not launch?

13 A Yes, that is correct.

14 Q That's all I was trying to
15 establish. Thank you, Mr. Ortman.

16 Now I'd like to ask you about
17 ratings.

18 A Okay.

19 Q You've never studied Nielsen
20 ratings for Orioles' games in Roanoke-
21 Lynchburg; correct?

22 A Never? I don't recall doing that,

1 no.

2 Q In your deposition you were asked
3 a question, did you ever study -- ever study -
4 - the Nielsen ratings for Orioles' games in
5 Roanoke-Lynchburg for any period of time, and
6 you answered, no, I did not.

7 A I have not.

8 Q Do you stand by that testimony
9 today?

10 A I do.

11 Q Okay, you have never studied
12 Nielsen ratings for Orioles' games in the Tri-
13 Cities area, correct?

14 A Correct.

15 Q And you have never studied Nielsen
16 ratings for Nationals' games in the Tri-
17 Cities, correct?

18 A That's correct.

19 Q You have never studied Nielsen
20 ratings for Orioles' games in Harrisburg;
21 correct?

22 A Other than the documents you gave

1 me during the deposition, no.

2 Q Harrisburg, Roanoke, Lynchburg,
3 the tri-cities, were the bottom of the barrel
4 in terms of consumer demand; correct?

5 A That's correct.

6 Q Okay. Now is it a fact that a
7 rating of a 1.0 or better would get your
8 attention?

9 A It would get my attention.

10 Q And anything over a 1.0 would also
11 get your attention?

12 A It certainly would.

13 Q And by getting your attention it
14 would be programming you would deem valuable;
15 correct?

16 A No, not necessarily.

17 Q A rating over a 1.0 that got your
18 attention would be significant?

19 A However, to answer your question
20 how I would gauge value is not a ratings
21 driven --

22 Q I'm moving to a different line. A

1 rating over 1.0 would be significant to you,
2 correct?

3 A It would get my attention.

4 Q Okay, and by getting your
5 attention that would be meaningful to you,
6 correct?

7 A Yes.

8 Q Isn't it true that the Orioles
9 drew ratings of a [REDACTED] in July 2004 in
10 Harrisburg on cable?

11 A I don't know that to be the case.

12 Q Isn't it true that in July 2005
13 the Orioles drew cable ratings of [REDACTED] in
14 Harrisburg on cable?

15 A I don't know that to be the case.

16 Q Isn't it true that in July, 2004,
17 the Orioles drew a [REDACTED] on CNS MA in Roanoke-
18 Lynchburg?

19 A I don't know that to be the case.

20 Q Isn't it true --

21 MR. KIRK: Objection, Your Honor,
22 he's testified that hasn't studied Nielsens.

1 Now he is testifying --

2 MR. FREDERICK: Well, Your Honor

3 --

4 JUDGE SIPPEL: Well, he's
5 permitted to do this.

6 MR. FREDERICK: Am I allowed to
7 do my cross-examination?

8 JUDGE SIPPEL: Yes, sir you are.
9 Go right ahead. I will overrule the
10 objection.

11 MR. FREDERICK: Thank you.

12 BY MR. FREDERICK:

13 Q Isn't it true that those ratings
14 for Roanoke-Lynchburg and Harrisburg are
15 higher than what the Orioles achieved than in
16 areas where Comcast launched MASN?

17 A I'm sorry, could you repeat the
18 question?

19 Q Isn't it true that those ratings
20 that I just gave you in Roanoke-Lynchburg and
21 Harrisburg are higher than in areas where
22 Comcast launched MASN?

1 A I don't know, because I never
2 studied the ratings.

3 Q All right, isn't it true that in
4 Charlottesville Comcast has launched MASN?

5 A Charlottesville? Yes, we have.

6 Q Isn't it true that in July, 2006
7 the ratings for Orioles and MASN was a [REDACTED]?

8 A I do not know.

9 Q Isn't it true that in May, 2006
10 MASN drew a rating of [REDACTED] in Charlottesville?

11 A I don't know.

12 Q Isn't it true that in markets
13 comparable -- in comparable distances from
14 Baltimore and Washington, the Orioles got
15 equivalent ratings?

16 A I don't know.

17 Q Isn't it true that in Emporia,
18 Virginia, 155 miles to D.C. and 180 miles to
19 Baltimore, the Orioles got a [REDACTED] rating in
20 May-June of 2005

21 A I don't know.

22 JUDGE SIPPEL: Are you -- I don't

1 understand -- are you trying to contest
2 whether or not he's being truthful about
3 whether or not he considers ratings? Or are
4 you trying to get something else in the
5 record?

6 MR. KIRK: He's testifying, Your
7 Honor.

8 JUDGE SIPPEL: Well, it certainly
9 isn't going to be used in any kind of a
10 finding. But let me find out what's going on
11 here.

12 MR. FREDERICK: Your Honor, the
13 purpose of the testimony -- the purpose of
14 the questions --

15 JUDGE SIPPEL: Yes.

16 MR. FREDERICK: -- is to
17 ascertain whether Mr. Ortman is aware that in
18 places where Comcast did not launch MASN the
19 ratings vary depending on factors that are
20 unrelated to geography.

21 JUDGE SIPPEL: He is not going to
22 be able to tell you that. I mean unless you

1 think that he is not telling us the truth.

2 MR. FREDERICK: And the question
3 is whether or not he can testify to that goes
4 directly to his knowledge of consumer demand.
5 If he doesn't know he doesn't know.

6 JUDGE SIPPEL: All right. He's
7 saying he doesn't know, because he doesn't
8 study the Nielsens to the extent that you are
9 asking the questions. He doesn't know. So
10 you know that's what you are trying to
11 establish; I think you've gone far enough on
12 that.

13 MR. FREDERICK: Thank you, Your
14 Honor. I just want to establish that when he
15 testified that a rating over a one would get
16 his attention --

17 JUDGE SIPPEL: Well, you don't
18 have to go any further than that.

19 MR. FREDERICK: Okay.

20 JUDGE SIPPEL: You made your
21 point.

22 BY MR. FREDERICK:

1 Q Okay, now I'd like to ask you
2 about Atlantic Coast Conference games if I
3 may.

4 Now you testified in your direct
5 testimony that Atlantic Coast Conference --
6 may I abbreviate that as ACC?

7 A Yes.

8 Q And we will both know what we are
9 talking about?

10 A Yes, sir.

11 Q Okay, so ACC games is what drove
12 carriage decisions in southwest Virginia?

13 A It was a factor, a major factor.

14 Q And you testified about that in
15 paragraph 28 of your testimony; correct?

16 A You want me to look it up? I take
17 your word for it.

18 Q And you think that ACC games are
19 important for carriage in southwest Virginia.

20 A That was our experience when I was
21 at Home Team Sports.

22 Q Okay. What year did CSN MA get

1 ACC games?

2 A Home Team Sports got ACC
3 programming in two ways in the '80s and '90s.
4 Number one was a broad comprehensive marketing
5 program agreement with the conference that did
6 not include men's basketball or football but
7 it included a variety of shoulder programs,
8 Olympic sports, women's basketball, soccer,
9 baseball, things of that nature.

10 We also got access to some ACC
11 games by televising the Colonial Athletic
12 Association games when they were playing an
13 ACC team. So we had a representative sampling
14 of ACC games on the network in the '80s --
15 more into the '90s.

16 Q Okay. How many games did Home
17 Team Sports acquire of ACC basketball?

18 A I don't recall.

19 Q Did HTS acquire any games of ACC
20 basketball when you were an employee of HTS?

21 A Yes, ACC away games, yes we did.

22 Q Away games?

1 A Yes.

2 Q Not home games?

3 A Correct.

4 Q Were they conference games?

5 A No.

6 Q These were non-conference away
7 games of ACC?

8 A Correct.

9 Q And which colleges were
10 represented in that ACC programming that HTS
11 acquired?

12 A I didn't say -- I'm sorry, ask the
13 question again. The ACC programming they
14 acquired --

15 Q Which colleges --

16 A Are in the Atlantic Coast
17 Conference?

18 Q No. Which colleges played the
19 games that HTS acquired?

20 A The Colonial Athletic Association,
21 the Atlantic 10, to name a couple.

22 Q Okay, let me try it a different

1 way. Are you familiar with the University of
2 Virginia?

3 A Yes.

4 Q And the University of Virginia is
5 in the ACC?

6 A Yes.

7 Q Did HTS acquire the games of the
8 University of Virginia during the time you
9 worked for HTS?

10 A Not University of Virginia home
11 games. But the University of Virginia may
12 have been represented -- I don't recall the
13 exact schedule -- when they were playing at
14 Richmond or at Virginia Tech, which was not in
15 the ACC at the time.

16 Q Okay. So the non-conference ACC
17 games of the University of Virginia --

18 A Yes.

19 Q -- may have been acquired by HTS,
20 but you are not sure?

21 A I don't know the exact schedule
22 from 1995, no, or whatever you are talking